

(Dkt. No. 88) for lack of jurisdiction with leave to re-file after on remand or at the conclusion of the pending appeal.

III. INDICATIVE RULING

Defendant next moves the Court to indicate, under FED. R. CIV. P. 62.1 that it would dissolve the Temporary Restraining Order (Dkt. No. 88) if this Court had jurisdiction. Dkt. No. 102 at 4-5. The Court considers Defendant's Cross-Motion (Dkt. No. 102), Plaintiff's Opposition to the Cross-Motion (Dkt. No. 105), Defendant's Reply (Dkt. No. 106), and Plaintiff's Sur-Reply (Dkt. No. 107-1).

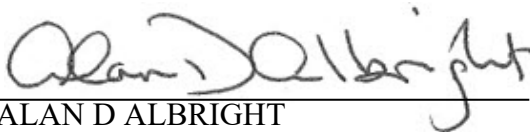
This case presents an unusual fact pattern. Defendant seeks to dissolve the Temporary Restraining Order (Dkt. No. 88) that restrains activities of the Plaintiff, and Plaintiff opposes dissolving the Temporary Restraining Order that restrains its own activities. Both Parties accuse the other of procedural gamesmanship. Defendant accuses Plaintiff of wastefully seeking to divest jurisdiction from this Court to secure a ruling from the Federal Circuit. Dkt. No. 102 at 3. Plaintiff accuses Defendant of seeking to avoid a broader ruling from the Federal Circuit so that Plaintiff can continue to obtain serial temporary injunctions. Dkt. No. 102-2 at 1.

Nonetheless, this Court finds it helpful to issue an indicative ruling under FED. R. CIV. P. 62.1(3). "If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may . . . state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue." *Id.* Defendant made a timely motion for relief that this Court lacked authority to grant because of a pending appeal. Therefore, this Court finds it proper to issue an indicative ruling.

Defendant took the position that, due to intervening events, the Court's Temporary Restraining Order (Dkt. No. 88) "is dissolved as a procedural matter" and that "it would not seek

to convert the December TRO into a Permanent injunction.” Dkt. No. 102-3 at 7. Because Defendant seeks to dissolve a restraint *against the Plaintiff* and because Defendant promised not to convert the Temporary Restraining Order into a permanent injunction, the Court **WOULD HAVE GRANTED** Defendant’s Cross-Motion (Dkt. No. 102) to dissolve the Temporary Restraining Order (Dkt. No. 88).

SIGNED this 17th day of February, 2022.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE